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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

EDWARD HOWARD WILEY,

Plaintiff and Appellant,

v.

CENTINELA HOSPITAL MEDICAL
CENTER,

Defendant and Respondent.

B202579

(Los Angeles County
Super. Ct. No. BC358665)

APPEAL from a judgment of the Superior Court of Los Angeles County.
Ernest Hiroshige, Judge. Affirmed.

Edward H. Wiley, in pro. per., for Plaintiff and Appellant.

Dummit, Buchholz & Trapp, Janet E. Trapp, Michael C. Ting for Defendant and
Respondent .

Contrary to plaintiff Edward Wiley's contention, his medical malpractice action against defendant Centinela Hospital Medical Center (hereinafter, Centinela Hospital) is barred by the statute of limitations, and the trial court properly sustained the hospital's demurrer to his second amended complaint.

FACTUAL AND PROCEDURAL SUMMARY

On September 18, 2006, Wiley filed in propria persona a complaint against Centinela Hospital and Dr. Sasan Yadegar for professional medical negligence and related causes of action. Wiley alleged that on January 25, 2000, he underwent brain surgery by Dr. Yadegar, who was not certified to perform surgeries of that nature. Following the surgery, Wiley regained consciousness and "felt his life was in danger and felt it was unsafe to remain at the hospital." He was allowed to leave Centinela Hospital without any antibiotics or pain medications, and "immediately" after his release was admitted to Martin Luther King Hospital's ICU for treatment for infections in his brain and other medical problems allegedly caused by Dr. Yadegar's negligence. Wiley also acknowledged that when he left Centinela Hospital, he left while suffering from headaches, memory and vision loss, and limited mobility. He asserted that Centinela Hospital was negligent in granting staff privileges to Dr. Yadegar, and that its negligence caused him to permanently suffer from headaches, memory and vision loss, and the inability to work steady jobs.

Centinela Hospital moved for judgment on the pleadings.¹ The motion was based on the fact that Wiley's complaint failed to state a cause of action against the hospital because he failed to file his complaint within the period of the statute of limitations, which establishes that unless tolled the action must be commenced "three years after the date of injury or one year after the plaintiff discovers . . . the injury, whichever occurs

¹ Dr. Yadegar apparently has not filed any pleadings in this case and is not a party to the present appeal.

first.” (Code Civ. Proc., § 340.5.)² The court granted Wiley leave to amend the complaint.

Wiley then filed a first amended complaint, which alleged several additional causes of action, but again acknowledged that he left Centinela Hospital “with memory and vision loss, limited mobility, [and] headaches,” and asserted he was admitted to another hospital for two weeks for treatment for infections in his brain and other medical problems. Centinela Hospital demurred to the first amended complaint on the grounds that the action was barred by the statute of limitations. Wiley’s opposition to the demurrer failed to address his allegations regarding the manifestations of symptoms from the injury or to dispute when the injury occurred. The opposition merely addressed Wiley’s subsequent claim that he did not discover that Dr. Yadegar was not certified to perform brain surgery until December of 2005.

The trial court held that Wiley’s first amended complaint failed to state any facts indicating fraud or intentional concealment of harm, which could toll the statute of limitations. According to Wiley’s own allegations, almost immediately after Dr. Yadegar performed brain surgery on him, Wiley experienced panic attacks, memory and vision loss, infections in his brain, and other problems. However, Wiley did not confront Dr. Yadegar until December of 2005, over five years after the surgery. Wiley did not allege that during that five-year period either Dr. Yadegar or Centinela Hospital concealed any problems with Wiley’s surgery or in any manner led him to believe he was experiencing only normal symptoms after his surgery.

The trial court found no basis for granting Wiley further leave to amend to show fraud or intentional concealment as a basis for tolling the statute of limitations because the first amended complaint did not materially differ from the original complaint. The court sustained the demurrer to the first amended complaint, but allowed Wiley leave to amend to set forth allegations regarding a foreign body, which could toll the statute of limitations period.

² All further statutory references are to the Code of Civil Procedure.

Thereafter, Wiley filed a second amended complaint with causes of action for fraud, intentional concealment, and the presence of a foreign body. The cause of action for fraud asserted that Dr. Yadegar was not certified or qualified to perform the surgery. The cause of action for intentional concealment asserted that Dr. Yadegar attempted to conceal his wrongdoing by allowing Wiley to leave the hospital after the brain surgery, by improperly discharging him from the hospital, and by removing himself from treating Wiley in December of 2005 and stating he had not been paid for the brain surgery operation. The third cause of action alleged that an MRI taken in December of 2005 showed a “foreign body” was left inside Wiley’s head.

Centinela Hospital demurred to the second amended complaint, again on the ground that the action was barred by the statute of limitations. The hospital urged that Wiley’s causes of action for fraud and intentional concealment failed to state a cause of action because they related to a surgery performed in January of 2000, and the court had already deemed those causes of action time-barred under the statute of limitations and permitted an amendment only to state a cause of action as to an alleged foreign body left in Wiley’s brain after the surgery. Also, the causes of action for fraud and concealment by Dr. Yadegar did not involve any allegations as to the hospital or its employees.

Regarding the cause of action for presence of a foreign body, Centinela Hospital argued that Wiley failed to allege sufficient specific facts demonstrating no therapeutic or diagnostic purpose or effect for the foreign body, and that Wiley failed to allege even the identity or nature of the foreign body. Wiley filed no opposition to the demurrer. The trial court then sustained the demurrer to the second amended complaint without leave to amend. It noted that Wiley failed to plead all the elements of the causes of action in even a conclusory fashion, and that he failed to allege facts establishing the absence of any therapeutic or diagnostic purpose or effect for the foreign body.

Wiley appeals.

DISCUSSION

Contrary to Wiley’s contention, his complaint was barred by the one-year statute of limitations. Section 340.5 provides, in pertinent part, as follows: “In an action for

injury of death against a health care provider based upon such person's alleged professional negligence, the time for the commencement of action shall be three years after the date of injury or one year after the plaintiff discovers, or through the use of reasonable diligence should have discovered, the injury, whichever occurs first." Under the discovery rule, the statute of limitations period begins to run once the plaintiff has notice or information of circumstances to put a reasonable person on inquiry. (*Jolly v. Eli Lilly & Co.* (1988) 44 Cal.3d 1103, 1110-1111.) "A plaintiff need not be aware of the specific 'facts' necessary to establish the claim Once the plaintiff has a suspicion of wrongdoing, and therefore an incentive to sue, [he] must decide whether to file suit or sit on [his] rights. So long as a suspicion exists, it is clear that the plaintiff must go find the facts." (*Id.* at p. 1111.)

In the present case, the allegations in Wiley's complaint establish that he had suspicions of wrongdoing stemming from the January 25, 2000, brain surgery performed by Dr. Yadegar when soon after the surgery Wiley was admitted to Martin Luther King Hospital. At that second hospital he was treated for infections in his brain and other medical problems allegedly suffered because of Dr. Yadegar's negligence. Wiley also left Centinela Hospital with memory and vision loss, limited mobility, and headaches, and he alleged he was discharged without any antibiotics or pain medications. Because Wiley did not file his complaint until September 18, 2006, over six years after his surgery and after the circumstances and symptoms which gave him a suspicion of wrongdoing, the complaint was barred by the one-year statute of limitations in section 340.5.

Wiley argues that he was not aware until December of 2005 that Dr. Yadegar was not "certified" to perform brain surgeries. In his first amended complaint, Wiley attempted to plead additional facts to circumvent the triggering of the one-year statute of limitations, asserting he was unaware of the lack of certification in February 2000. However, the doctor's lack of certification does not negate the fact that Wiley was aware of his brain infections, lack of medication upon discharge and various physical problems occurring immediately after the surgery in 2000, which constituted sufficient suspicion to trigger the running of the statute of limitations.

Nor was the statute of limitations tolled “(1) upon proof of fraud, (2) intentional concealment, or (3) the presence of a foreign body which has no therapeutic or diagnostic purpose or effect.” (§ 340.5.) Fraud and intentional concealment are generally combined into the concept of “fraudulent concealment” (*Sanchez v. South Hoover Hospital* (1976) 18 Cal.3d 93, 99), which applies when “the defendant intentionally prevents the plaintiff from instituting suit.” (*Bernson v. Browning-Ferris Industries* (1994) 7 Cal.4th 926, 931.) The plaintiff must show an “affirmative misrepresentation,” and not merely a continuation of the prior nondisclosure. (*Trantafello v. Medical Center of Tarzana* (1986) 182 Cal.App.3d 315, 321.) Here, to the extent Wiley alluded to fraud or intentional concealment, he failed to allege any affirmative acts, such as Dr. Yadegar’s withholding any information. And Wiley failed to allege any type of fraud or intentional concealment of Dr. Yadegar’s credentials by the hospital, though he amended his complaint twice.

Wiley’s third cause of action in his second amended complaint consisted of a two-sentence paragraph, entitled “presence of a foreign body,” which alleged that an “MRI taken in December 2005” showed “a foreign body left inside plaintiff’s head.” However, Wiley did not describe or identify the foreign object. Most significantly, he failed to explain—or even to allege in conclusory language—that the foreign body had “no therapeutic or diagnostic purpose or effect” (§340.5), which is necessary to toll the statute of limitations.

Accordingly, the trial court properly sustained the demurrer to Wiley's second amended complaint.³

DISPOSITION

The judgment is affirmed.

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BOREN, P.J.

We concur:

DOI TODD, J.

CHAVEZ, J.

³ Finally, we note that to the extent Wiley seeks some special accommodation because he is representing himself in this litigation, we cannot accord him any exceptional treatment. "A doctrine generally requiring or permitting exceptional treatment of parties who represent themselves would lead to a quagmire in the trial courts, and would be unfair to the other parties to litigation." (*Rappleyea v. Campbell* (1994) 8 Cal.4th 975, 985.)

Thus, "[e]xcept when a particular rule provides otherwise, the rules of civil procedure must apply equally to parties represented by counsel and those who forgo attorney representation." (*Rappleyea*, at pp. 984-985.) A party not represented by counsel in a civil case is "entitled to the same, but no greater, consideration than other litigants and attorneys." (*Harding v. Collazo* (1986) 177 Cal.App.3d 1044, 1056.)